



**WRITTEN TESTIMONY OF THE
GOVERNMENT ETHICS AND STATE AFFAIRS COMMITTEE**

**ASSEMBLY STANDING COMMITTEE ON GOVERNMENTAL OPERATIONS
ASSEMBLY STANDING COMMITTEE ON LOCAL GOVERNMENTS
ASSEMBLY STANDING COMMITTEE ON CITIES**

**PUBLIC HEARING ON THE COVID-19 PANDEMIC'S
IMPACT ON THE OPEN MEETINGS LAW**

October 25, 2021

The open meetings law exists to ensure that the public can observe and participate in the decision making of democratic government.

The pandemic has caused local governments, including New York City, to engage in an unplanned experiment in holding open meetings and public hearings via video conference technology, first pursuant to Emergency Executive Order 202.1 and, after its expiration, pursuant to temporary legislation.¹ This experiment demonstrated that New York City government agencies were generally able to hold such meetings using these now widely available technologies and that these technologies may make it easier for some members of the public to attend. For example, some members of the public may not attend open meetings held in-person for reasons of disability, the obligations of childcare, or the inability to leave their place of work at the time of the open meeting.

However, not all members of the public have the resources and know-how to attend open meetings via video conference technology and the ability of some members of the public to participate in real time by video conference may be somewhat circumscribed.

For these reasons the New York City Bar Association encourages the adoption of legislation amending the open meetings law to require open meetings to be held in a hybrid format where the public may attend either in person or by video conference. Holding hybrid open meetings would encourage greater public participation in open meetings where members of the public might

¹ Emergency Executive Order 202.1, March 7, 2020, https://www.nysac.org/files/EO_202_1.pdf; A.40001 / S.50001, Chp. 417 (NYS 2021).

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

otherwise not be able to attend, thus better achieving the original purpose of the open meetings law.

While the open meetings law requires recording, live webcasting, and posting of open meetings “to the extent practicable and within available funds,”² New York City Charter Section 1063(d) already requires that open meetings of the City’s government be video recorded, archived, and posted online within 72 hours, and provides that open meetings be webcast live “where practicable,” meaning that a significant part of the requisite technology for holding hybrid meetings should already be in place. Other local governments around the state may not be as prepared to implement such a requirement, thus necessitating that a mandate of hybrid meetings must be accompanied with appropriate assistance from the state.

An amendment of the open meetings law to permit or require hybrid meetings should also permit the members of the governmental body holding such a meeting to attend via video conference. The same reasons for permitting members of the public to attend open meetings by video conference apply to the public servants who are holding the meeting. Indeed, members of many of the governmental bodies subject to the open meetings law, such as in New York City, are part-time public servants who fit their often unpaid public service into busy lives that include other full-time private employment. The open meetings law need not create unnecessary obstacles to recruiting such part-time public servants who might otherwise be unable to contribute their time and expertise to local government, especially where such obstacles might limit the participation of persons who are often underrepresented.

To this end, the Legislature should amend the requirement of the open meetings law that the public be notified of and permitted to attend “at each location” at which a member of the body is attending an open meeting by video conference.³ Observing the participating public servant attending by video conference at the specific location from which the public servant is participating in the meeting does not materially improve the public’s ability to evaluate that public servant’s statements or views about the subject of the meeting, and such a requirement only discourages public servants from participating in open meetings by video conference where they would be required to admit the public to their private homes or other non-public spaces.

Government Ethics & State Affairs Committee
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² Public Officers Law Article 7, Section 103(f).

³ Public Officers Law Article 7, Sections 103(c) and 104(4).